

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

For Assignees Claiming Eligibility as a Very Small Business, Very Small Business Consortium, Small Business, or as a Small Business Consortium

Assignee certifies that they are eligible to obtain the licenses for which they apply.

Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

For Assignees Claiming Eligibility as a Rural Telephone Company

Assignee certifies that they meet the definition of a Rural Telephone Company as set out in the applicable FCC rules, and must disclose all parties to agreement(s) to partition licenses won in this auction. See applicable FCC rules.

Transfers of Control

4) Licensee Eligibility (for transfers of control only)

As a result of transfer of control, must the licensee now claim a larger or higher category of eligibility than was originally declared?

If 'Yes', the new category of eligibility of the licensee is:

Certification Statement for Transferees

Transferee certifies that the answers provided in Item 4 are true and correct.

The copy resulting from Print Preview is intended to be used as a reference copy only and MAY NOT be submitted to the FCC as an application for manual filing.

Attachment List

Attachment Type	Date	Description	Contents
Other	11/15/04	Exhibit 6 - Competition chart	0179755877593546861920965.pdf
Other	11/15/04	Exhibit 5 - Spectrum overlaps	0179755897593546861920965.pdf
Other	11/15/04	Exhibit 4 - Pending litigation	0179755927593546861920965.pdf
Ownership	11/15/04	Exhibit 3 - Foreign ownership	0179755937593546861920965.pdf
Other	11/15/04	Exhibit 2 - Licenses	0179755947593546861920965.pdf
Other	11/15/04	Exhibit 1 - Description of Transaction	0179755977593546861920965.pdf
Other	11/16/04	Resubmitted Exhibit 6 - Competition chart	0179760637593546861920965.pdf

Other	12/02/04	Bankruptcy Court Order	<u>0179794817593546861920965.pdf</u>
Other	12/02/04	Amended Exhibit 1	<u>0179795537593546861920965.pdf</u>

**DESCRIPTION OF TRANSACTION
AND PUBLIC INTEREST STATEMENT**

I. INTRODUCTION

NextWave Telecom Inc. ("NextWave Telecom") and Celco Partnership d/b/a Verizon Wireless ("Celco"), in two simultaneously filed applications, seek the Commission's consent to transfer control of two licensees, NextWave Personal Communications Inc., debtor-in-possession ("NPCI"), and NextWave Power Partners Inc., debtor-in-possession ("NPPI"), from NextWave Telecom to Celco.¹

This transfer of control involves 23 broadband PCS licenses, 19 of which authorize the use of 10 MHz of spectrum and four for 20 MHz, covering the Basic Trading Areas ("BTAs") listed in Exhibit 2 (the "Licenses"). The transfer of control will occur pursuant to an Agreement by and among NextWave Telecom and Verizon Wireless dated as of November 4, 2004 (the "Agreement"). Because NextWave is undergoing bankruptcy reorganization, the U.S. Bankruptcy Court for the Southern District of New York has reviewed and approved the Agreement.²

This transaction does not involve the transfer of control of any other FCC licenses or authorizations, including microwave stations or international Section 214 authorizations, and does not require any waivers. No filing fees are owed in connection with these applications. Moreover, no customers will be transitioned to a new carrier as a result of this transaction.

The transaction is consistent with the Global Resolution Agreement ("GRA"), dated as of April 20, 2004, between NextWave and the Commission.³ Through the GRA, the Commission has settled all of its financial claims relating to the installment payment obligations incurred by NextWave in connection with the acquisition of its licenses (including the 23 licenses covered by

¹ NextWave Telecom, NPCI and NPPI are referred to jointly in this exhibit as "NextWave." Celco will hold its interest in the licensees through a wholly-owned subsidiary, VZW Corp. Celco and VZW Corp are referred to jointly in this exhibit as "Verizon Wireless."

² See Order Granting Motion Pursuant to Sections 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2002 Approving Acquisition Agreement and Termination Payment, rel. December 1, 2004, Case No. 98 B 21529 (B. Ct. S.D.N.Y.). The bankruptcy court's order is included as an exhibit to this application.

³ See Order Granting Motion Pursuant to Section 363 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 6004 and 9019 Approving Settlement and Releases, rel. May 25, 2004, Case No. 98 B 21529 (B. Ct. S.D.N.Y.), at Exhibit 1.

these applications). The Agreement, in accordance with Section 3 of the GRA, contemplates that Verizon Wireless will deliver to the FCC a portion of the purchase price agreed to by the FCC ("Section 3 Payment") in satisfaction of NextWave's settlement obligations to the FCC under the GRA. Accordingly, the Applicants request that as part of the FCC approval, the FCC state that under the FCC's rules, and as memorialized in the GRA, there are no unjust enrichment obligations associated with the Licenses.

The transaction will serve the public interest and fulfill the goals of the Telecommunications Act of 1996. Due to a complex set of circumstances, spectrum licensed to NextWave has not been used to deliver widespread commercial wireless communications to the public. The proposed transaction will enable that spectrum to be put to prompt commercial use to benefit wireless consumers – an outcome that unquestionably is in the public interest. It will give Verizon Wireless the spectrum it needs to expand its footprint, to compete for additional wireless voice customers, and to deploy new wireless broadband data services. The transaction creates no realistic risk of any countervailing competitive harm. It will raise Verizon Wireless's spectrum holdings to 35 MHz or less in five of the BTAs, to 45 MHz in fourteen of the BTAs, to 55 MHz or less in two BTAs, and to 65 MHz in two BTAs.

II. DESCRIPTION OF THE PARTIES

A. NextWave

NextWave was formed in 1995 to provide PCS services, including broadband wireless services, and holds various PCS licenses obtained through FCC auctions. An FCC Form 602 providing ownership information concerning NextWave and its subsidiaries is on file with the Commission. NextWave's qualifications to be a licensee are not in doubt, and there is no question that NextWave possesses the qualifications necessary to hold the licenses.⁴ NextWave's certifications to the FCC that it satisfied the FCC's 5-year "build out" rule relating to the licenses were accepted by the FCC on April 21, 2003. No financial obligations to the government attach to the Licenses, other than those set forth in the GRA, which will be satisfied pursuant to the Agreement.

B. Verizon Wireless

Cellco is a general partnership that is jointly owned by Verizon Communications Inc. and Vodafone Group Plc ("Vodafone"). Cellco's qualifications to hold cellular and PCS licenses are

⁴ See *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, WT Docket No. 03-217, *Memorandum Opinion and Order*, FCC 04-26 (rel. February 12, 2004) ("*NextWave-Cingular Order*"), at ¶ 25.

a matter of public record, established and approved in various Commission decisions.⁵ **Exhibit 3** provides detailed information regarding ownership of Cellco; this information also is contained in Cellco's Form 602, which is on file with the Commission.

The Commission has previously approved Vodafone's 45%, indirect, non-controlling interest in Cellco, as well as Vodafone's qualifications (as a foreign corporation) to hold indirect ownership interests in common carrier licensees, pursuant to section 310(b)(4) of the Communications Act.⁶ Vodafone continues to hold this 45% indirect interest. Neither Vodafone nor any of its foreign subsidiaries holds any direct ownership interests in any common-carrier licenses. Thus, no new foreign-ownership issues are raised by this filing, and the Commission can and should extend the previous section 310(b)(4) authorization to the Licenses included in this application.

Exhibit 4 provides information responsive to questions on Form 603 that seek information as to pending litigation involving the transferee. The responses to those questions, together with Exhibits 3 and 4, demonstrate that Verizon Wireless is fully qualified to acquire control of the Licenses that are the subject of this application.

III. DESCRIPTION OF THE TRANSACTION

The transaction involves the transfer of control of 23 PCS licenses that NextWave obtained through competitive bidding. All but four of the Licenses are for 10 MHz of spectrum in the C, D, E and F blocks; the remaining four licenses are for 20 MHz. See Exhibit 2.

⁵ See, e.g., *Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless*, WT Docket No. 03-19, *Memorandum Opinion and Order*, 18 FCC Rcd 6490 (Comm'l Wireless Div. 2003) ("*Northcoast Order*"); Public Notice, "*Wireless Telecommunications Bureau and International Bureau Grant Consent for Assignment or Transfer of Control of Wireless Licenses and Authorizations from Price Communications Corporation to Cellco Partnership d/b/a Verizon Wireless*," DA 01-791 (rel. Mar. 30, 2001) ("*Price/Verizon Wireless Order*").

⁶ See *Northcoast Order* at ¶ 6 n.15 (finding that Vodafone's interest "ha[d] been previously approved by the Commission under section 310(b)(4)" and because "no changes have occurred in Verizon Wireless' foreign ownership since . . . these rulings[,] the applications raise no new foreign ownership issues"); *Applications of Vodafone AirTouch Plc and Bell Atlantic Corp.*, *Memorandum Opinion and Order*, 15 FCC Rcd 16507 at ¶ 19 (IB and WTB 2000) ("*Vodafone/Bell Atlantic Order*"); FCC Public Notice, "International Authorizations Granted," Report No. TEL-00174, DA No. 99-3033 (IB and WTB, rel. Dec. 30, 1999); *Applications of AirTouch Communications, Inc. and Vodafone Group, Plc.*, 14 FCC Rcd 9430 at ¶ 9 (WTB 1999).

The transaction is part of a plan of reorganization that NextWave will submit to the bankruptcy court. Under the transaction and that plan, VZW Corp., a wholly-owned subsidiary of Cellco, will acquire all of the shares of NextWave Telecom, which directly owns all of the capital stock of NPCI and indirectly owns all of the capital stock of NPPI. NPCI and NPPI are the two NextWave entities that hold the PCS licenses. The transaction will thereby transfer control of these licensees to Cellco. At closing, these entities will have no assets other than the licenses, and no liabilities. Pursuant to an internal corporate restructuring, all of NextWave's liabilities and remaining assets will be consolidated into a newly formed operating company through which NextWave intends to develop, build and operate broadband wireless networks.

IV. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST.

This transaction will serve the public interest in four principal ways. First, it will give Verizon Wireless the spectrum capacity it needs to provide its industry-leading voice service to new and existing subscribers. Second, the additional spectrum will enable Verizon Wireless to deploy its first-of-kind wireless broadband data service (known as EV-DO) more rapidly and more broadly. Third, the transaction will enable Verizon Wireless to operate more efficiently. Fourth, the transaction will increase the spectrum used to provide wireless services to consumers and will facilitate the successful resolution of bankruptcy proceedings involving NextWave. The transaction accordingly advances two core goals of the Telecommunications Act of 1996 – promoting competition in all segments of the communications marketplace, and promoting the rapid deployment of advanced telecommunications capability.

A. Expanded Wireless Voice Services

The transaction will permit Verizon Wireless to enter and compete as a new facilities-based carrier in one top-100 wireless market, Tulsa, OK, where it currently holds no spectrum.⁷ The transaction will also alleviate the spectrum constraints that Verizon Wireless will soon experience in some markets, and will allow the company to meet the growing demand for its services in other markets.⁸ In most of the BTAs involved in this new transaction, Verizon

⁷ Exhibit 5 identifies the amount of spectrum VZW currently holds in the 23 markets covered by this transaction. In addition to the Tulsa, OK BTA, VZW will acquire spectrum for the first time in one county in the Detroit BTA. In three markets – Denver, CO, Portland, OR and Provo, UT – Verizon Wireless currently has either 25 MHz or less, but has pending before the Commission an application to acquire 10 MHz of spectrum from Qwest Wireless. *Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the Assignment of Sixty-Two Broadband Personal Communications Services Licenses*, WT Docket No. 04-2654, DA 04-2254, Public Notice (July 22, 2004). Acquiring the 10 MHz Qwest and NextWave licenses will give Verizon Wireless 45 MHz or less in these three markets.

⁸ According to Lehman Brothers, Verizon Wireless currently has less spectrum relative to the traffic on its network than any of the other national wireless providers. See B. Bath, Lehman

Wireless holds or will hold following consummation of the Qwest transaction 35 MHz or less. The transaction will give Verizon Wireless additional spectrum in these markets, which will enhance its ability to accommodate new subscribers and to provide new services. This in turn will enable Verizon Wireless to continue competing vigorously – competition that will directly translate into benefits to consumers. The transaction accordingly furthers the same goals the Commission upheld when it allocated PCS spectrum in 10 MHz blocks with the expectation that existing cellular carriers would obtain that spectrum to expand their spectrum capacity to 35 MHz in order to enhance their systems and compete in the market.⁹

B. New Wireless Broadband Services

Verizon Wireless also needs additional spectrum in which to deploy new wireless broadband services for which there is rapidly growing demand. Verizon Wireless is the first U.S. carrier to have launched what will become a nationwide high-speed wireless data network, and its entry has already prompted competitive responses from other carriers.¹⁰ Offering speeds comparable to cable modem and DSL (average data rates of 300-500 kbps with peak data rates up to 2.4 Mbps), Verizon Wireless's EV-DO technology is the most sophisticated wireless broadband technology currently available.¹¹ Verizon Wireless launched EV-DO service in San Diego and Washington, DC in October 2003,¹² and is currently expanding EV-DO service to include Las Vegas, New York, Philadelphia, Miami-Fort Lauderdale, Atlanta, Austin, Kansas

Brothers, *Wireless Services Industry Update: Spectrum Availability, Industry Implics.* at Figure 4 (June 17, 2004).

⁹ See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700, ¶¶ 97-111 (1993).

¹⁰ See, e.g., Nextel Press Release, *Nextel Expands Successful Broadband Trial to Include Paying Customers and Larger Coverage Area* (Apr. 14, 2004) (Nextel has begun accepting paying customers for its Wireless Broadband service in the Raleigh-Durham/Chapel Hill area; the service offers downlink speeds of up to 1.5 Mbps with burst rates of up to 3.0 Mbps; typical uplink speeds are up to 375 kbps with burst rates of up to 750 kbps); Sprint Press Release, *Sprint Announces Plans to Extend Its Wireless Data Leadership with Launch of High-Speed Wireless Data Technology* (June 22, 2004) (Sprint will deploy EV-DO in select markets in second half of 2004, and launch in the majority of top metropolitan markets in 2005).

¹¹ B. Richards, et al., CIBC World Markets, Investext Rpt. No. 7305232, Sierra Wireless Inc. – Company Report at *2 (Mar. 6, 2003) (EV-DO networks are “comparable to those of DSL and cable modems”).

¹² Verizon Wireless Press Release, *Wireless Broadband Data Service Introduced in Major Metro Areas* (Sept. 29, 2003).

City, Baltimore, Tampa, West Palm Beach, Milwaukee, and 24 airports from coast to coast. It has committed to invest \$1 billion over the next two years to rollout the service nationwide.¹³

Wireless broadband networks will make possible the provision of new and innovative services to end users, not only to mobile phones and laptop computers but also to car dashboards – services as diverse as maps, directions, music, full-featured mobile video phones; multimedia mobile messaging; and mobile emergency and safety applications such as remote patient monitoring and mobile robotics.

The deployment of wireless broadband will grow the competitive wireless industry as a whole. On wireline networks, data now accounts for more than a third of local revenues, up from only 9 percent as of 1996.¹⁴ Analysts expect comparable growth in wireless data over the next several years.¹⁵ In 2003, laptop sales surpassed desktop sales for the first time, and this trend is expected to continue.¹⁶ Laptops already represent 25 percent of all PCs, and this is expected to grow to 35 percent within the next five years.¹⁷ Analysts expect that 75 percent of Personal Digital Assistants will be able to access the Internet by 2007.¹⁸ As with any expansion of industry output, these developments can be expected to bring about gains in jobs and productivity.

EV-DO, however, requires considerable spectrum capacity. A data session can require peak data rates that are 10-100 times greater than the peak data rates required to support a voice call. Put another way, data sessions will significantly increase the capacity demand on Verizon Wireless' network and spectrum resources. To be prepared to meet the network capacity needed in the future for burgeoning data demand, as well as the continued increase in voice traffic,

¹³ See Verizon News Release, *Verizon Wireless Makes Strides with Planned BroadbandAccess 3G Network Expansion* (Mar. 22, 2004) (Verizon is "on target" to expand its EV-DO offering to cover one-third of its network (approximately 75 million Americans) by the end of 2004. Verizon has committed to invest \$1 billion over the next two years to rollout the service nationwide.); Verizon Wireless Press Release, *Verizon Wireless and Lucent Technologies Launch EV-DO Data Services in Additional US Markets* (Sept. 23, 2004).

¹⁴ Compare T.A. Jacobs, et al., JP Morgan H&Q, *Telecom Services 2001* at Table 1 (Nov. 2, 2001) with J. Bazinet, et al., JP Morgan, *The Art of War* at Table 2 (Nov. 7, 2003) (2003 est.).

¹⁵ See J. Bazinet, et al., JP Morgan, *The Art of War* at Table 2 (Nov. 7, 2003).

¹⁶ See NPD Group Press Release, *Historic Firsts: Notebooks Outsell Desktops and LCD Monitors Unit Sales Surpass CRT Monitors According to The NPD Group* (July 1, 2003).

¹⁷ See Merrill Lynch Capital Markets, Investext Rpt. No. 7693240, *PC Handbook – Worldwide PC Forecast – Industry Report* at Table 4 (Nov. 5, 2003); Bear, Stearns & Co., Inv., Investext Rpt. No. 7654809, *PC Industry Forecast: Raising 2003 PC Unit Growth from 9% to 1* – Industry Report (Oct. 20, 2003).

¹⁸ See B. Cole, *Net-centric Appliances Provide a New Platform Paradigm*, EE Times (Mar. 28, 2003) (citing Instat/MDR Internet access devices market analyst Cindy Wolf).

Verizon Wireless needs to ensure it has sufficient spectrum to deploy. This transaction will provide Verizon Wireless with spectrum to meet the expected growth in demand for EV-DO as well as other services.

C. Increased Efficiency

The proposed transaction will also help Verizon Wireless operate more efficiently. In the past, the growth of national carriers such as Verizon Wireless has correlated with a consistent trend toward lower prices, greater coverage, and expanded service offerings for wireless consumers.¹⁹

In markets that Verizon Wireless already serves, the new spectrum will help it avoid the inefficiencies associated with cell splitting, an engineering strategy that is growing increasingly difficult, time-consuming, and expensive, in part because of the need to obtain new sites and the zoning and other approvals for those sites. The new licenses will enable Verizon Wireless to add spectrum capacity to its existing network, which is much more efficient than cell-splitting. The Commission has repeatedly recognized that capturing such economics through spectrum acquisitions is in the public interest because they lower prices, improve service quality, expand coverage and roaming capabilities, lower roaming rates, and accelerate deployment of state-of-the-art services. The Commission has also recognized the pro-competitive efficiencies that can be realized when carriers spread the cost of deploying network infrastructure, customer service and other operations over a larger customer base.²⁰

D. Putting Spectrum to Use and Terminating NextWave's Bankruptcy

¹⁹ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service ("Ninth CMRS Competition Report")*, FCC 04-216 (rel. Sept. 28, 2004), ¶¶ 222-223: "By a number of performance indicators, U.S. consumers continue to benefit greatly from robust competition in the CMRS marketplace. During 2003, the CMRS industry experienced another year of growth, demonstrating the continuing demand for and reliance upon mobile services. . . . [A] wide variety of indicators of carrier conduct and market structure also show that competition in mobile telecommunication markets is robust."

²⁰ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 17 FCC Rcd 12985, 12997 (2002) ("*Seventh CMRS Competition Report*") ("The Commission has concluded previously that operators with larger footprints can achieve certain economies of scale and increased efficiencies compared to operators with smaller footprints. Such benefits, along with advances such as digital technology, have permitted companies to introduce and expand innovative pricing plans such as digital-one-rate type plans, reducing prices to consumers.").

Finally, the proposed transaction will advance the public interest by increasing the spectrum that will be used to provide wireless services to consumers. As the Commission is aware, for a complex set of reasons, the spectrum licensed to NextWave has not been used to deliver widespread commercial wireless communications to the public. By placing that spectrum in the hands of Verizon Wireless, an experienced provider, the Commission will ensure that the spectrum will be put to use.²¹ Moreover, the acquisition of the licenses by Verizon Wireless is the cornerstone of NextWave's successful reorganization, which will enable NextWave to pay all creditors in full and emerge with a viable wireless business. Approval thus advances the public interest long recognized by the Commission in facilitating the successful resolution of bankruptcy proceedings involving its licensees.²²

V. THE TRANSACTION WILL NOT ADVERSELY AFFECT COMPETITION.

The proposed transaction will produce the significant public interest benefits described above. In addition, this transaction will have no countervailing adverse effect on competition.

The transaction will bring a new wireless competitor to a top-100 market – Tulsa, Oklahoma. For the first time Verizon Wireless will be able to compete head to head in that market, bringing new products and services to benefit Tulsa consumers. Its entry into that market will intensify competition and thereby serve the public interest.

In all other markets, where it will acquire additional spectrum, Verizon Wireless will continue to face vigorous competition from numerous competitors. Because the spectrum licensed to NextWave has not been used to deliver widespread commercial wireless services, the transaction will not result in the elimination of an active competitor in any market, substantially eliminating any potential for competitive harm.²³

²¹ See *NextWave-Cingular Order* ¶ 32 (noting public interest benefit resulting from “spectrum that has been sitting idle for more than five years as a result of litigation . . . be[ing] put into use for the benefit of wireless consumers”).

²² See, e.g., *Space Station System Licensee, Inc. and Iridium Constellation LLC*, 17 F.C.C.R. 2271, 2289 ¶ 44 (granting assignment applications when the grant “will serve the public interest by furthering the equitable purposes of the Federal Bankruptcy Act”); *In re Applications of Martin W. Hoffman, Trustee-In-Bankruptcy, For Astroline Communications Company Limited Partnership*, 15 F.C.C.R. 22,086 (2000) ¶ 14 (approving settlement agreement and renewing license when doing so would advance the public interest in “allowing for the termination of the . . . bankruptcy proceeding”) (citing *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974)).

²³ See *NextWave-Cingular Order* ¶ 31 (noting that Commission independently investigated the possible competitive harm resulting from the loss of “potential competition” from NextWave).

Exhibit 6 lists those wireless carriers that, to the best of the applicants' knowledge, are currently offering commercial service in each BTA, as well as those carriers that hold licenses but do not appear to be offering commercial service at this time. The exhibit shows that each of the nationwide carriers other than Verizon Wireless – Sprint PCS, Cingular Wireless, Nextel, and T-Mobile – have established operations in most of the affected BTAs. Verizon Wireless will also face additional competition in some markets from large regional carriers such as U S Cellular and ALLTEL, as well as from smaller regional carriers such as Leap and Dobson.

Although Exhibit 6 lists only facilities-based carriers, the Commission has found that wireless resellers provide “additional constraints against anti-competitive behavior.”²⁴ For example, Virgin Mobile now serves more than 1.75 million customers through resale; Qwest Wireless is transitioning to a reseller with millions of customers of its own. AT&T has announced it will begin offering service as a wireless reseller, and even cable operators are expected to bundle wireless together with their video and Voice-over-IP offerings.²⁵

Finally, the transaction will not involve any competitively significant increase in Verizon's spectrum holdings in any relevant market area. **Exhibit 5** lists the 23 BTAs in which Verizon Wireless will obtain spectrum from NextWave. It shows that there is one BTA where there is no spectrum overlap. In the vast majority of the other BTAs, and in all the counties

and concluded that “given the level of actual competition prevailing in those markets today, we do not believe any adverse impact on mobile telephony rates or service will result”).

²⁴ See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, *Memorandum Opinion & Order*, FCC 04-255 (released Oct. 26, 2004) (“AT&T-Cingular Order”), at ¶ 92; see also *2000 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order ¶ 42, WT Docket No. 01-14, FCC 01-328 (rel. Dec. 18, 2001) (“[C]arriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator (‘MVNO’) arrangement.”); *id.* fn.145 (The MVNO arrangement “is one in which ‘a network operator acts as a wholesaler of airtime to another firm, which then markets itself to users just like an independent operator with its own network infrastructure.’”); see also J. Moynihan, *et al.*, Merrill Lynch, *US Wireline 1Q04 Roundup* at 3 (May 7, 2004) (“[T]here may be five or more large scale companies reselling wireless service by 2005, along with the five facilities-based wireless providers (post the Cingular/ AT&T Wireless transaction.)”).

²⁵ See Virgin Mobile USA News Release, *Virgin Mobile USA Passes 1.75 Million Subscriber Mark* (Mar. 15, 2004); AT&T News Release, *AT&T To Offer Wireless Services to Consumers and Businesses Nationwide through Agreement with Sprint* (May 18, 2004); J. Moynihan, *et al.*, Merrill Lynch, *US Wireline 1Q04 Roundup* at 3 (May 7, 2004); Wall Street Journal, *Cable Titans Discuss Offering Cellular Services, Intensifying Foray into Telecom's Turf* (Nov. 8, 2004).

within those BTAs, the transaction will increase Verizon Wireless's spectrum holdings to 45 MHz or less. Of the remaining BTAs and counties within those BTAs, Verizon Wireless's spectrum would increase to 55 MHz or less in two BTAs, and to 65 MHz in two BTAs.

These post-transaction spectrum holdings are well within levels the Commission previously found not to raise the potential for competitive harm. In previous license transfer proceedings, the Commission approved similar spectrum acquisitions, finding that they did not "threaten[] competitive harm in the spectrum input market."²⁶ In all but two BTAs, Verizon Wireless' spectrum holdings after closing both this and the Qwest Wireless transaction will not exceed 55 MHz and thus will be consistent with – and in most cases less than – the Commission's previous spectrum caps, which were the levels that, in the Commission's judgment, did not raise any competitive concerns.²⁷

Moreover, in all of the markets where it is acquiring licenses from NextWave, Verizon Wireless will hold less than 70 MHz – the threshold for review that the Commission established in the recent *AT&T-Cingular Order*. The Commission stated that, in line with the "conservative approach" it was taking for its competition analysis, using a 70 MHz threshold "would eliminate from further consideration any market in which there is no potential for competitive harm."²⁸ It determined that there was no need to subject to further review any market where the level of spectrum to be held would not exceed 70 MHz. It found that "a market may contain more than three viable competitors even where one entity controls this amount of spectrum, because many carriers are competing successfully with far lower amounts of bandwidth today."²⁹ It went on to authorize Cingular to hold as much as 80 MHz in certain markets based on its evaluation of the competitive conditions in those markets. In contrast, the largest amount of spectrum Verizon

²⁶ *Northcoast Order*, *supra* n. 1 (approving Verizon Wireless's acquisition of spectrum in 50 BTAs that would result in Verizon Wireless holding 35 MHz or less in 44 BTAs and between 45 and 55 MHz in the remaining 6 BTAs); *see also ALLTEL/CenturyTel Order*, *supra* n. 25 (approving ALLTEL's acquisition of numerous 10 MHz PCS licenses that overlapped with its existing 25 MHz cellular licenses).

²⁷ *See, e.g., Price/Verizon Wireless Order* (approving spectrum aggregation of 55 MHz of combined cellular and PCS spectrum in Jacksonville MTA); *360/ALLTEL Order*, Public Notice, "Wireless Telecommunications Bureau Grants consent for The Transfer of Control of Licenses from CenturyTel, Inc. to ALLTEL Communications," DA 02-1366 (rel. June 12, 2002) ("*ALLTEL/CenturyTel Order*") (approving ALLTEL's acquisition of multiple cellular and PCS licenses, including eight BTAs where there was overlap between a 25 MHz cellular license and a 10 MHz PCS license); *Applications of Vanguard Cellular Systems, Inc. and Winston, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 3844 (WTB 1999) (authorizing acquisition of overlapping cellular and PCS spectrum holdings in various markets).

²⁸ *AT&T-Cingular Order* ¶ 109.

²⁹ *Id.*

will hold – 65 MHz in the New York City and Baltimore BTAs – is under the 70 MHz threshold level. Under *AT&T-Cingular*, none of the markets covered by this transaction require further competitive examination.

Since Verizon Wireless will hold no more than 65 MHz in any market after this transaction – and significantly less in most – the proposed transfers of control clearly present no competitive concerns. Moreover, the wireless competitive issues that the Commission addressed in the *AT&T-Cingular* proceeding resulted from the fact that an established competitor in many markets across the country would be merged into another existing provider, thereby removing one competitor altogether, while also significantly increasing the market share of the other. The NextWave-Verizon Wireless transaction, in contrast, presents no such consolidation. It will neither eliminate an existing competitor nor increase Verizon Wireless's market share in any market. In fact, this transaction will add a new competitor in one market.

Acquiring this spectrum will also enable Verizon Wireless to meet the expected rapid growth in spectrum-intensive broadband data services. The two BTAs where Verizon Wireless will hold 65 MHz, New York City and Baltimore, are both major metropolitan markets with strong growth in the demand for wireless services. (Verizon Wireless provides service in Baltimore and Washington, DC on an integrated basis.) These areas are national business, financial and political centers. They will be on the leading edge of increasing demand for advanced broadband wireless data products. Baltimore-Washington was one of the initial two markets where Verizon Wireless deployed EV-DO. Its billion dollar investment in EV-DO in these and other markets (see Section IV(B) above) was based on its projections that demand for data services will steadily increase, and it expects that demand to grow most rapidly in large markets such as New York and Baltimore-Washington.

For the foregoing reasons, grant of this application will fully comply with all Commission rules, will be consistent with the Commission's actions in other proceedings, and will serve the public interest.

License Information

Atlantic City, NJ	BTA025	KNLH221
Baltimore, MD	BTA029	KNLF652
Boston, MA	BTA051	KNLF646
Columbia, SC	BTA091	KNLH215
Corpus Christi, TX	BTA099	KNLH216
Daytona Beach, FL	BTA107	KNLH219
Denver, CO	BTA110	KNLF802
Detroit, MI	BTA112	KNLH202
Dover, DE	BTA116	KNLH224
El Centro-Calexico, CA	BTA124	KNLH230
Greenville-Spartanburg, SC	BTA177	KNLH211
Janesville-Beloit, WI	BTA216	KNLH225
Los Angeles, CA	BTA262	KNLF645
Madison, WI	BTA272	KNLH214
New York, NY	BTA321	KNLF644
Ocala, FL	BTA326	KNLH226
Philadelphia, PA- Wilmington, DE-Trenton, NJ	BTA346	KNLH201
Pittsfield, MA	BTA351	KNLH228
Portland, OR	BTA358	KNLF812
Provo-Orem, UT	BTA365	KNLH223
Springfield-Holyoke, MA	BTA427	KNLH212
Tulsa, OK	BTA448	KNLH210
Washington, DC	BTA461	KNLF647

of \$25,000," treble damages, disgorgement, punitive damages, interest, costs, and reasonable attorney's fees. Defendants' motion to dismiss is fully briefed.

Wireless World Communications, Inc. et al. v. Verizon Wireless (VAW), LLC etc. (Los Angeles County Superior Court, California)

This putative nationwide class action is brought on behalf of independent cellular telephone dealers selling cellular telephone handsets and telephone services to California consumers. The suit alleges unfair business practices and seeks unspecified compensatory damages, treble damages and injunctive relief. Plaintiffs have filed a notice of appeal from the trial court's granting of Verizon Wireless' demurrer. Plaintiffs' brief is due November 15, 2004 and Verizon Wireless' opposition is due January 14, 2005.

11/04

SPECTRUM OVERLAPS
Cellco – NextWave Transaction

Atlantic City, NJ	Atlantic, NJ	35	10	45
	Cape May, NJ	35	10	45
Baltimore, MD	Anne Arundel, MD	45	20	65
	Baltimore, MD	45	20	65
	Carroll, MD	45	20	65
	Harford, MD	45	20	65
	Howard, MD	45	20	65
	Kent, MD	45	20	65
	Queen Anne's, MD	45	20	65
	Talbot, MD	45	20	65
	Baltimore City, MD	45	20	65
Boston, MA	Essex, MA	35	20	55
	Middlesex, MA	35	20	55
	Norfolk, MA	35	20	55
	Plymouth, MA	35	20	55
	Suffolk, MA	35	20	55
	Rockingham, NH	35	20	55
	Strafford, NH	10	20	30
Columbia, SC	Fairfield, SC	35	10	45
	Kershaw, SC	10	10	20
	Lexington, SC	35	10	45
	Newberry, SC	35	10	45
	Richland, SC	35	10	45
	Saluda, SC	35	10	45
Corpus Christi, TX	Aransas, TX	30	10	40
	Bee, TX	30	10	40
	Brooks, TX	30	10	40
	Duval, TX	30	10	40
	Jim Wells, TX	30	10	40
	Kenedy, TX	30	10	40
	Kleberg, TX	30	10	40
	Live Oak, TX	30	10	40

	Nueces, TX	30	10	40
	Refugio, TX	30	10	40
	San Patricio, TX	30	10	40
Daytona Beach, FL	Flagler, FL	30	10	40
	Volusia, FL	30	10	40
Denver, CO*	Adams, CO	25	10	35
	Arapahoe, CO	25	10	35
	Boulder, CO	25	10	35
	Chaffee, CO	25	10	35
	Cheyenne, CO	25	10	35
	Clear Creek, CO	25	10	35
	Denver, CO	25	10	35
	Douglas, CO	25	10	35
	Eagle, CO	25	10	35
	Elbert, CO	25	10	35
	Gilpin, CO	25	10	35
	Grand, CO	25	10	35
	Gunnison, CO	25	10	35
	Hinsdale, CO	25	10	35
	Jackson, CO	25	10	35
	Jefferson, CO	25	10	35
	Kit Carson, CO	25	10	35
	Lake, CO	25	10	35
	Lincoln, CO	25	10	35
	Logan, CO	25	10	35
	Moffat, CO	25	10	35
	Morgan, CO	25	10	35
	Park, CO	25	10	35
	Phillips, CO	25	10	35
	Pitkin, CO	25	10	35
	Routt, CO	25	10	35
	Broomfield, CO	25	10	35
	Sedgwick, CO	25	10	35
	Summit, CO	25	10	35
	Washington, CO	25	10	35
	Yuma, CO	25	10	35
	Cheyenne, KS	0	10	10
	Sherman, KS	0	10	10

	Wallace, KS	0	10	10
Detroit, MI	Lapeer, MI	25	10	35
	Livingston, MI	25	10	35
	Macomb, MI	25	10	35
	Monroe, MI	25	10	35
	Oakland, MI	25	10	35
	St. Clair, MI	25	10	35
	Sanilac, MI	0	10	10
	Washtenaw, MI	25	10	35
	Wayne, MI	25	10	35
Dover, DE	Kent, DE	25	10	35
	Sussex, DE	25	10	35
	Caroline, MD	25	10	35
El Centro-Calexico, CA	Imperial, CA	25	10	35
Greenville-Spartanburg, SC	Polk, NC	35	10	45
	Cherokee, SC	35	10	45
	Greenville, SC	35	10	45
	Laurens, SC	35	10	45
	Pickens, SC	35	10	45
	Spartanburg, SC	35	10	45
	Union, SC	35	10	45
Janesville-Beloit, WI	Rock, WI	20	10	30
	Walworth, WI	20	10	30
Los Angeles, CA	Inyo, CA	35	10	45
	Los Angeles, CA	35	10	45
	Orange, CA	35	10	45
	Riverside, CA	35	10	45
	San Bernardino, CA	35	10	45
	Ventura, CA	35	10	45
Madison, WI	Columbia, WI	30	10	40
	Crawford, WI	30	10	40

	Dane, WI	30	10	40
	Green, WI	30	10	40
	Iowa, WI	30	10	40
	Juneau, WI	30	10	40
	Lafayette, WI	30	10	40
	Marquette, WI	30	10	40
	Richland, WI	30	10	40
	Sauk, WI	30	10	40
New York, NY	Fairfield, CT	45	20	65
	Bergen, NJ	45	20	65
	Essex, NJ	45	20	65
	Hudson, NJ	45	20	65
	Hunterdon, NJ	45	20	65
	Middlesex, NJ	45	20	65
	Monmouth, NJ	45	20	65
	Morris, NJ	45	20	65
	Ocean, NJ	45	20	65
	Passaic, NJ	45	20	65
	Somerset, NJ	45	20	65
	Sussex, NJ	45	20	65
	Union, NJ	45	20	65
	Bronx, NY	45	20	65
	Kings, NY	45	20	65
	Nassau, NY	45	20	65
	New York, NY	45	20	65
	Orange, NY	45	20	65
	Putnam, NY	45	20	65
	Queens, NY	45	20	65
	Richmond, NY	45	20	65
	Rockland, NY	45	20	65
	Suffolk, NY	45	20	65
	Sullivan, NY	45	20	65
	Westchester, NY	45	20	65
	Pike, PA	20	20	40
Ocala, FL	Marion, FL	30	10	40

BLS State		BLS County		
Philadelphia, PA- Wilmington, DE- Trenton, NJ	New Castle, DE	35	10	45
	Cecil, MD	35	10	45
	Burlington, NJ	35	10	45
	Camden, NJ	35	10	45
	Cumberland, NJ	35	10	45
	Gloucester, NJ	35	10	45
	Mercer, NJ	35	10	45
	Salem, NJ	35	10	45
	Bucks, PA	35	10	45
	Chester, PA	35	10	45
	Delaware, PA	35	10	45
	Montgomery, PA	35	10	45
	Philadelphia, PA	35	10	45
Pittsfield, MA	Berkshire, MA	35	10	45
Portland, OR*	Clackamas, OR	25	10	35
	Clatsop, OR	25	10	35
	Columbia, OR	25	10	35
	Grant, OR	0	10	10
	Harney, OR	0	10	10
	Hood River, OR	0	10	10
	Lincoln, OR	25	10	35
	Multnomah, OR	25	10	35
	Sherman, OR	0	10	10
	Tillamook, OR	25	10	35
	Wasco, OR	0	10	10
	Washington, OR	25	10	35
	Wheeler, OR	0	10	10
	Yamhill, OR	25	10	35
	Clark, WA	25	10	35
	Klickitat, WA	0	10	10
	Skamania, WA	0	10	10
Provo-Orem, UT*	Juab, UT	25	10	35
	Utah, UT	25	10	35

RESPONSE TO QUESTION 73

The Applicant, Cellco Partnership d/b/a Verizon Wireless ("Cellco"), is ultimately owned and controlled by Verizon Communications Inc. ("Verizon") and Vodafone Group Plc ("Vodafone"). Verizon, a Delaware corporation, owns 55% of Cellco; Vodafone, a company organized under the laws of the United Kingdom, owns 45%. Control of Cellco is vested in a Board of Representatives, which in turn is controlled by Verizon. In sum, Verizon is the majority owner and possesses sole affirmative control of Cellco. Vodafone's interest in Cellco, and its qualifications (as a foreign corporation) to hold indirect ownership interests in common carrier licenses have been previously authorized by the FCC under Section 310(b)(4) of the Communications Act.¹ Neither Vodafone nor any of its foreign subsidiaries hold any direct ownership interests in any common carrier licenses. No new foreign ownership issues are raised by this filing.

Since the Commission approved the foreign ownership of Cellco Partnership as outlined above in this exhibit, there have been no changes in that foreign ownership.

¹ See *In re Applications of Vodafone AirTouch Plc and Bell Atlantic Corporation, For Consent to the Transfer of Control or Assignment of Licenses and Authorizations, Memorandum Opinion and Order*, DA 00-721 at ¶ 19 (Intl. and Wir. Tel. Burs., rel. Mar. 30, 2000); *FCC Public Notice*, "International Authorizations Granted," Report No. TEL-00174, DA No. 99-3033 (Intl. Bur., rel. Dec. 30, 1999); *In re AirTouch Communications, Inc., Transferor, and Vodafone Group, Plc, Transferee, For Consent to the Transfer of Control of Licenses and Authorizations, Memorandum Opinion and Order*, 14 FCC Rcd 9430, ¶ 9 (Wir. Tel. Bur., 1999).

Springfield-Holyoke, MA	Franklin, MA	10	10	20
	Hampden, MA	35	10	45
	Hampshire, MA	35	10	45
Tulsa, OK	Craig, OK	0	10	10
	Creek, OK	0	10	10
	Delaware, OK	0	10	10
	Mayes, OK	0	10	10
	Okmulgee, OK	0	10	10
	Osage, OK	0	10	10
	Pawnee, OK	0	10	10
	Rogers, OK	0	10	10
	Tulsa, OK	0	10	10
	Wagoner, OK	0	10	10
Washington, DC	District of Columbia	35	20	55
	Calvert, MD	35	20	55
	Charles, MD	35	20	55
	Frederick, MD	35	20	55
	Montgomery, MD	35	20	55
	Prince George's, MD	35	20	55
	St. Mary's, MD	35	20	55
	Arlington, VA	35	20	55
	Culpeper, VA	10	20	30
	Fairfax, VA	35	20	55
	Fauquier, VA	35	20	55
	Loudoun, VA	35	20	55
	Prince William, VA	35	20	55
	Rappahannock, VA	35	20	55
	Stafford, VA	35	20	55
	Alexandria City, VA	35	20	55
	Fairfax City, VA	35	20	55
	Falls Church City, CA	35	20	55
	Manassas City, VA	35	20	55
	Manassas Park, VA	35	20	55
	Jefferson, WV	10	20	30

* In three markets – Denver, CO, Portland, OR and Provo, UT – Verizon Wireless currently has 25 MHz or less, but has pending before the Commission an application to acquire 10 MHz of spectrum from Qwest Wireless. *Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the Assignment of Sixty-Two Broadband Personal Communications Services Licenses*, WT Docket No. 04-2654, DA 04-2254, Public Notice (July 22, 2004). Acquiring the 10 MHz Qwest and NextWave licenses will give Verizon Wireless 45 MHz or less in these three markets.

Wireless Licensees in Basic Trading Areas (BTAs) Where Verizon Wireless Proposes To Acquire Spectrum

BTA	Cellular-A	Cellular-B	PCS-A	PCS-B	PCS-C	PCS-D	PCS-E	PCS-F	ESMR
(BTA 25) Atlantic City, NJ	Cingular	Verizon Wireless	Cingular	Sprint PCS	T-Mobile	Verizon Wireless	Cingular	NextWave	NexTel
(BTA 29) Baltimore, MD	Cingular	Verizon Wireless	Sprint PCS T-Mobile	Cingular	NextWave	Verizon Wireless	Verizon Wireless	T-Mobile	NexTel
(BTA 51) Boston	Cingular	Verizon Wireless	Cingular	Sprint PCS	NextWave	T-Mobile	T-Mobile	Verizon Wireless	NexTel
(BTA 91) Columbia, SC	Verizon Wireless	ALLTEL	Tiron PCS Cingular	Cingular	Verizon Wireless	Sprint PCS	ALLTEL	NextWave	NexTel
(BTA 99) Corpus Christi, TX	Cingular*	Cingular*/ La Ward Tel.	Sprint PCS T-Mobile	Verizon Wireless	Cingular*	T-Mobile	Cingular*	NextWave	NexTel
(BTA 107) Daytona Beach, FL	Cingular	Cingular	T-Mobile	Verizon Wireless	X-10 Wireless	Sprint PCS	Cingular	NextWave	NexTel
(Denver, CO)	Cingular	Western Wireless Union Telecom	Sprint PCS	T-Mobile NE Colorado Cellular	NextWave	Cingular Union Telecom	Qwest (pending transfer to VZW)	Cricket	NexTel
(BTA 110)	Verizon Wireless	Verizon Wireless	Verizon Wireless	Verizon Wireless	American Wireless	Sprint PCS	Cingular	NextWave	NexTel
(BTA 112) Detroit, MI	Verizon Wireless	Cingular*	Cingular*	Sprint PCS	T-Mobile	NextWave	Action 58	Sam Isabel Cellular	NexTel
Dover, DE (BTA 116)	Cingular	Verizon Wireless	Cingular	Sprint PCS	T-Mobile	Cingular	Cingular	NextWave	NexTel
El Centro-California, (BTA 124)	Western Wireless	Verizon Wireless	Sprint PCS	Cingular T-Mobile	Lewis & Clark NTCH	NextWave	Cingular	FB Communications	NexTel

Greenville-Spartanburg, SC (BTA 177)	Verizon Wireless	ALLTEL US Cellular	Triton PCS Cingular	Cingular	Verizon Wireless Triton PCS	Sprint PCS	ALLTEL	NextWave	Nextel
					T-Mobile				
Janesville-Beloit, WI (BTA216)	US Cellular	Cingular	Sprint PCS	Verizon Wireless Cingular	Airadigm	Cingular	ALLTEL	NextWave	Nextel
Los Angeles, CA (BTA 262)	Cingular Western Wireless	Verizon Wireless	Sprint PCS	Cingular T-Mobile	NextWave	Cingular	Verizon Wireless	T-Mobile	Nextel
					Cingular				
					Auction 58				
Madison, WI (BTA 272)	US Cellular	Cingular ALLTEL	Sprint PCS Cingular	Verizon Wireless	Airadigm	Cingular	NextWave	PCS Wisconsin	Nextel
			Northwest Iowa Tel. Co.						
New York, NY (BTA 321)	Cingular Verizon Wireless Dobson Sussex Cellular	Verizon Wireless Cingular South Canaan Cell. Comm. Co.	T-Mobile Cingular	Sprint PCS Cingular	NextWave	T-Mobile	Cingular	Verizon Wireless	Nextel
					Verizon Wireless				
Ocala, FL (BTA 326)	Cingular	ALLTEL	T-Mobile	Verizon Wireless	Cingular	Sprint PCS	Cingular	NextWave	Nextel
Philadelphia, PA-Wilmington, DE-Trenton, NJ (BTA 346)	Cingular	Verizon Wireless	Cingular	Sprint PCS	T-Mobile	Cingular	Verizon Wireless	NextWave	Nextel
Pittsfield, MA (BTA 351)	Verizon Wireless	Cingular	Cingular	Sprint PCS	T-Mobile	NextWave	T-Mobile	Verizon Wireless	Nextel
Portland, OR (BTA 358)	Cingular Rural Cellular	Verizon Wireless US Cellular	T-Mobile	Sprint PCS	NextWave	Cingular Rural Cellular	Qwest (pending transfer to VZW)	Salmon PCS (Cingular)	Nextel
					Cingular				
					Auction 58		Auction 58		
Provo-Orem, UT (BTA 365)	Cingular Western Wireless	Verizon Wireless	T-Mobile	Sprint PCS	Cingular Cricket	Cingular	Qwest (pending transfer to VZW)	NextWave	Nextel
Springfield-Holyoke, MA (BTA 427)	Verizon Wireless Rural Cellular	Cingular	Cingular	Sprint PCS	T-Mobile	T-Mobile	NextWave	Verizon Wireless	Nextel
Tulsa, OK (BTA 448)	Cingular formerly AT&T Wireless** US Cellular	US Cellular Cingular ALLTEL Dobson	Cingular	Sprint PCS	T-Mobile Cricket	T-Mobile	Cingular American Cellular	NextWave	Nextel
	Western Wireless								
Washington, DC (BTA 461)	Cingular Dobson	Verizon Wireless ALLTEL US Cellular	Sprint PCS	Cingular	NextWave	Verizon Wireless	T-Mobile	T-Mobile	Nextel